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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/071,179 | 03/19/2002 | Lydie Bougueleret | 44.US4.DIV | 2980 |
| 23557 | 7590 | 03/19/2004 | EXAMINER | |
| SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION 2421 N.W. 41ST STREET SUITE A-1 GAINESVILLE, FL 326066669 | | | KATCHEVES, KONSTANTINA T | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1636 | |
| DATE MAILED: 03/19/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,179

Applicant(s)

BOUGUELERET, LYDIE

Examiner

Konstantina Kalcheves

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25,27,29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 25,27,29 and 30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 25, 27, 29 and 30 are pending in the present application. The preliminary amendment filed 7 February 2002 cancelled claims 1-24, 26 and 28 and presented new claim 30.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 25 and 27, drawn to a non-human mammal or host animal, classified in class 800, subclasses 8 and 14.
- II. Claim 29, drawn to an isolated or purified antibody, classified in class 424, subclass 130.1.
- III. Claim 30, drawn to an isolated and purified polypeptide of SEQ ID NO:29, classified in class 530, subclass 300.

The inventions are distinct, each from the other because of the following reasons:

The animal of Group I, the antibody of Group II and the polypeptides of Group III are chemically, biologically, and functionally distinct from each other and thus one does not render the other obvious. The animal of Group I is not required to produce the antibody of DNA of Group II and the polypeptide of Groups III (the antibody and polypeptides can be produced synthetically). The antibodies and polypeptides of Group II and Groups III-XXVII are not required to produce the animal of Group I (which can be made using a synthetically produced vector). Therefore, the inventions of the two groups are capable of supporting separate patents.

Group I is directed to patentably distinct polypeptides. The amino acid sequences SEQ ID Nos: 1, 4 and 5-29 of Group I are subject to a restriction requirement. The products drawn to

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different and distinct sequences do not render obvious each other and thus are patentably distinct. Sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence or amino acid sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq. Accordingly, in most cases, only one (1) independent and distinct sequence will be examined in a single application without restriction.

Therefore, if Group I is elected, applicant must elect a single invention which is the product drawn to one specific sequence SEQ ID NO:1, 4 or any one of 5-29 to which the claims will be restricted. Note, this restriction to examination of a single sequence is due to the now very high and undue burden for examining more than one sequence which is caused by the continued exponential increase of size of the sequence databases to be searched for each sequence, resulting in a corresponding increase in computer search time and examiner time for reviewing the computer search results. The limited resources of the Office no longer permit examination of more than one sequence in an application.

Because these inventions are distinct for the reasons given above and the search required for each of the above groups is not required for the others, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: fragments 1-481, 666-1465, 1521-67592, 67704-71118, 71185-72598,

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72690-75543, 75624-81841, 81934-83019, 83406-87901, 88041-93856, 93937-97158, 97236-98962, 99086-103188, 103745-104303, 104654-105084, 105 180-106682, 106781-107798, 107897-108392, 108552-114335, 114418-114491, 114594-132246, 132332-134150, 134350-145565, 145842-146332, 146775-150446, 150542-152959, 153176-155590, 155738-159701, 160466-161028, and 161453-162450 of SEQ ID NO: 1 and fragments 1-208, 1307-1350, 1703-1865, 2107-2180, 2843-3333, 3871-3882, 4222-4276, and 5017-5579 of SEQ ID No. 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 27 is generic. In other words, Applicant must elect a single claimed fragment of SEQ ID NO:1 or a single claimed fragment of SEQ ID NO:4 if Group I and one of either SEQ ID Nos:1 or 4 are elected.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to

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be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konstantina Katcheves whose telephone number is (571) 272-0768. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday 7:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Remy Yucel, Ph.D. can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Konstantina Katcheves
Group Art Unit: 1636
12 March 2004